



HO-CHUNK NATION GAMING COMMISSION

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Tracie L. Stevens, Chairwoman
Daniel J. Little, Associate Commissioner
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, D.C. 20005

RE: Comments on Proposed Amendments to 25 CFR Parts 543

Dear Commissioners:

On behalf of the Ho-Chunk Nation ("Nation"), the Ho-Chunk Nation Gaming Commission ("Commission") is submitting this letter to comment on the proposed amendments by the National Indian Gaming Commission ("NIGC") in the Federal Register on February 20, 2013 affecting 25 C.F.R. Part 543. The NIGC's proposed amendments concern modifications to the NIGC's regulations to add standards for the drop and count and surveillance of kiosks.

INTRODUCTION

The Nation is a federally recognized Indian tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 476, pursuant to a written Constitution which has been approved by the Secretary of the Interior. The NIGC has recognized this inasmuch as the NIGC has engaged in consultation with the Nation in multiple meetings under the NIGC's Government-to-Government Tribal Consultation Policy, 69 FR 16973, and entered into a Memorandum of Understanding Regarding the Submission of Background Investigation Materials with the Nation in January 2000.

The Nation presently operates the Ho-Chunk Gaming - Wittenberg, Ho-Chunk Gaming - Black River Falls, Ho-Chunk Gaming - Nekoosa, and Ho-Chunk Gaming - Tomah Casinos in the State of Wisconsin pursuant to a Tribal-State Class III Compact with Wisconsin. The Nation also conducts Class II gaming pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C § 2701 et. seq. at the Wisconsin Dells and Black River Falls facilities. The Nation also operates an exclusively Class II gaming facility, Ho-Chunk Gaming - Madison.

The Nation expresses its appreciation for the opportunity to comment on these proposed regulations.

General Comments Regarding the Proposed Regulations

The Commission understands that an appropriate regulatory framework needs to be developed to address the use of kiosks in a gaming environment. However, we also recognize the stated purpose and scope of the proposed amendments is to address kiosks, which we might characterize as, "an electronic or electromechanical facsimile of a cage cashier", which is specifically designed to be able to be dropped and

filled as needed, in response to patron activity, in contrast to the traditional "gaming day" drop and count associated with gaming machines. It is inappropriate to extend the "revenue center regulatory model" (i.e., standard gaming machine drop and count standards) to a predominantly "service provider environment or function" (i.e., kiosks). By doing so, the proposed amendments fail to achieve the most effective oversight of kiosk use consistent with the need for operational flexibility. As a result, in their current form, the proposed amendments would unnecessarily compromise the ability of the gaming operators to fully utilize the kiosks for the function they are designed to fulfill.

Accordingly, the Commission would recommend that the NIGC propose that kiosk standards be developed as a separate section and also reevaluate the decision to incorporate them as an amendment into the current gaming machine drop and count regulatory scheme.

Specific Regulatory Comments and Concerns

§ 543.17(h) "Kiosk drop, count and fill standards." First, there are no clear "fill" standards contained within the proposed amendments. If it is the NIGC's intent to develop "fill" standards, the Commission recommends that such standards be in a separate section from the drop and count requirements.

Moreover, the proposed amendments are unclear as to what department(s) has authorization to access to and the changing of the currency cassettes. If restricted to the "drop and count team", the facility would then be required to acquire and retain additional staff and equipment solely to service the kiosks and to reduce unnecessary and costly downtimes - provided the drop/count team is on the premises. Allowing another department (Cage) to conduct such activity would provide much needed operational flexibility although it is not clear that this is permitted pursuant to the proposed amendments.

Additionally, the Commission notes numerous other questions with the revised section (h): What cassettes must be pulled during the drop - all or just the storage components? What standards exist for coin cassettes/hoppers? Does the NIGC interpret the amendment to require the presence of a separate department during the drop process to print the kiosk report which the count team is not to have access to?

And finally, would the NIGC consider including language such as, "Alternate procedures that provide at least the level of control as described by the standards in this section, as approved by the TGRA, will be acceptable"?

§ 543.17(h)(4)(i)(C) "Unique identification number for each financial instrument component in the kiosk." The Commission recommends, for purposes of clarity, that this be rewording to, "Unique identification number for each financial instrument component by denomination in the kiosk."

§ 543.17(i)(1)(ii) "In an emergency, authorized persons for the resolution of a problem." It is not clear that this vaguely worded requirement would provide any effective control when most needed. Recommend that the facility develop and implement procedures, as approved by the TGRA, for emergency access procedures. Such procedures should require the participation of independent personnel, document reason(s) for access, and provide for notification to the TGRA.

§ 543.17(i)(6) "Count equipment and systems must be tested, and the results documented, before the first count begins, to ensure the accuracy of the equipment;" Testing the currency counters immediately before the count would not serve a practical purpose as problems will typically arise during the count, regardless of any 'pre-count testing', and any inaccuracies will be recognized immediately. This requirement would also require the count team to have to sign out test money from the vault on a daily basis. This presents an unnecessary regulatory burden without any evidence of improvement in effective control.

§ 543.17(i)(10) "Two counts of the currency rejected by the currency counter must be recorded per kiosk as well as in total." It should not be necessary to record the count of rejected currency in total as the amounts are already posted by kiosk.

§ 543.17(i)(13) through (15) To the extent that these requirements are not lacking in clarity, they are unnecessarily burdensome and again fail to provide any practical improvement in oversight. It fails to make clear who is verifying what and when. Section 13 requires reconciliation by a count team member that is not the sole recorder. Section 14 requires all agents to attest to their participation. Then, after all agents have attested, section 15 requires "a final verification", by "at least two agents, one of whom is a supervisory count team member", of total proceeds "before transfer to cage/vault" (where the total proceeds will be subject to another verification). The Commission recommends that the regulation as proposed in section 15 be withdrawn from consideration. The NIGC has offered no substantiation for any cause or need for this additional language nor has the NIGC offered any evidence that it serves to provide increased effective controls. The requirement of a "supervisory" count team imposes an unnecessary operational and financial burden on all affected facilities. The Commission would additionally ask the NIGC the purpose of performing section 15's "final verification" for those tier A and B facilities where "the entire count can be performed by two count team members".

Conclusion

While the Commission recognizes that to keep pace with changes in technology, there exists the need to regularly update gaming regulations. The Commission applauds the NIGC's efforts to address these changes in order to bring regulatory sections up to date. However, as necessary as it is to ensure that regulatory modifications prevent potentially harmful gaps in gaming regulation, it is also necessary to ensure that such modifications do not rely too heavily upon a "cookie cutter" approach with existing regulations such that the modifications unnecessarily burden tribes without a commensurate improvement in the effective regulation of gaming. As the function of kiosks is separate and distinct from that of the drop and count of gaming machines, it is reasonable to believe that appropriate regulations governing the use of kiosks might also be separate and distinct. Again, the Commission would recommend that the NIGC propose that kiosk standards be developed as a separate section and reevaluate the decision to incorporate them into the gaming machine drop and count regulatory scheme. Finally, the Nation again expresses its appreciation for the opportunity to comment on these proposed regulations.

Respectfully,

Daniel R Blumer

Daniel Blumer, Commissioner,
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